

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

**WILLIS STEVEN COUCH  
PLAINTIFF**

**V**

**HOME DEPOT U.S.A., INC. and  
THE SCOTTS COMPANY, LLC  
DEFENDANTS**

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**CIVIL ACTION NO: 4: 21-CV-1390**

**DEFENDANT, THE SCOTTS COMPANY, LLC'S, NOTICE OF REMOVAL**

**TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT:**

Please take notice that Defendant, THE SCOTTS COMPANY, LLC, pursuant to 28 U.S.C. §§1332(a), 1441(a), 1446 and the applicable Local Rules of the Northern District of Texas, hereby removes to this Court the state court action described below:

1. On November 30, 2021, an action was commenced in the 352nd Judicial District Court of the State of Texas in and for Bexar County, Texas, entitled WILLIS STEVEN COUCH vs. HOME DEPOT U.S.A., INC. and THE SCOTTS COMPANY, LLC ("SCOTTS") with Cause No. 352-330585-21. A copy of Plaintiff's Original Petition with the Citation and Service of Process upon Defendant SCOTTS is attached hereto as **Exhibit A**.
2. Defendant, SCOTTS, was served with suit on December 2, 2021.
3. Defendant, SCOTTS, filed an Original Answer on December 23, 2021, a copy of which is attached hereto as **Exhibit B**. Defendant, SCOTTS, served a Court Advisory on December 23, 2021, a copy of which is attached hereto as **Exhibit C**.

4. This Notice of Removal is filed in accordance with 28 U.S.C. §§1441(b) and 1446.

5. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. §1332 and is one which may be removed to this Court by Defendant pursuant to the provisions of 28 U.S.C. §1332 (a) in that it is a civil action between citizens of Texas and citizens or subjects of a foreign state, and the matter in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs. Plaintiff's claims are based on alleged injuries suffered by WILLIS STEVEN COUCH, while on Defendant HOME DEPO's premises. Based on the Original Petition, Plaintiff seeks damages for past and future medical expenses, past and future physical pain and suffering, past and future mental anguish, past and future physical impairment, lost earnings, damage to earnings capacity, and disfigurement in the past and future. Plaintiff sought monetary relief in an amount over \$250,000 and not more than \$1,000,000.00.

6. Defendant is informed and believes that Plaintiff is a resident of the State of Texas based on statements contained in Plaintiff's Original Petition. The incident made the basis of this lawsuit occurred in Tarrant County, Texas. Defendant SCOTTS was, at the time of the filing of this action, and still is, a citizen of Ohio, being incorporated under the laws of the State of Ohio and having its principal place of business in the State of Ohio. Defendant SCOTTS is a citizen of Ohio because it is a corporation organized under the laws of Ohio and because none of its members are residents of the State of Texas. For purposes of determining diversity of citizenship, a corporation is deemed a citizen of the state where the

corporation's principal place of business is; the corporation's principal place of business is the place from which the corporation is controlled. *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010). Further, on information and belief, Defendant HOME DEPOT is a citizen of Georgia because its principal place of business is in the State of Georgia.

7. Removal is proper because there is complete diversity between the parties under 28 U.S.C. §1332(a). Defendant SCOTTS is a corporation incorporated under the laws of the State of Ohio, with its principal place of business in Ohio. Defendant HOME DEPOT is a corporation with its principal place of business in Georgia. 28 U.S.C. §1332(a, c); *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010) (corporation's principal place of business is the place from which the corporation is controlled). THE SCOTTS COMPANY, LLC is, therefore, a citizen of Ohio and of no other state.

8. Defendant SCOTTS is removing this case within the 30-day period stipulated by the rules based on notice of the amount in controversy being greater than \$75,000.00 exclusive of interest and attorneys' fees.

9. All pleadings, process, orders, and all other filings in the state court action are attached to this notice as required by 28 U.S.C. §1446(a).

10. Venue is proper in this district under 28 U.S.C. §1441(a) because this district and division embrace the place in which the removed action has been pending.

11. The undersigned has filed with the Court and served Plaintiff by and through his attorney of record a copy of the Notice to Adverse Party of Removal to Federal Court which is attached hereto as **Exhibit D**.

12. The undersigned has further filed with the Court and served Plaintiff by and through his attorney of record a copy of the Notice to Court of Removal which is attached hereto as **Exhibit E**.

13. In accordance with 28 U.S.C. §1441(a), this matter is being removed to the U.S. District Court for the Northern District of Texas, Ft. Worth Division because this court is the court for the district and division embracing the place where such action is pending, i.e., Tarrant County, Texas.

WHEREFORE, Defendant THE SCOTTS COMPANY, LLC, respectfully requests that this case be entered upon the docket of the United States District Court for the Northern District of Texas, pursuant to 28 U.S.C. §§1441 and 1446.

Respectfully submitted,

**PAUL GARCIA & ASSOCIATES**  
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*/s/ Clarkson F. Brown*

CLARKSON F. BROWN  
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PAUL GARCIA  
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**ATTORNEYS FOR DEFENDANT**  
**THE SCOTTS COMPANY, LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was served in accordance with the Federal Rules of Civil Procedure, this *31<sup>st</sup> day of December 2021* on the following counsel of record, properly addressed as follows:

Michael H. Smith  
Daniel J. Smith  
SMITH & SMITH  
6040 Camp Bowie Blvd., Suite 14  
Fort Worth, TX 76116  
**ATTORNEYS FOR PLAINTIFF**

**Served via: e-mail message generated by the CM/ECF E-Filing system on:**  
[msmith@smithsmith-law.com](mailto:msmith@smithsmith-law.com) and [dsmith@smithsmith-law.com](mailto:dsmith@smithsmith-law.com)

*/s/ Clarkson F. Brown*  
CLARKSON F. BROWN